

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2219.05  
COMPLAINT INVESTIGATOR: Joe Bear  
DATE OF COMPLAINT: February 16, 2005  
DATE OF REPORT: March 18, 2005  
REQUEST FOR RECONSIDERATION: yes/April 12, 2005 - not revised  
DATE OF CLOSURE: May 9, 2005

**COMPLAINT ISSUES:**

Whether the East Allen County Schools violated, with regard to Student A:

511 IAC 7-17-23(a) and (b) by failing to follow appropriate procedures for a diagnostic teaching evaluation;

Whether the East Allen County Schools violated, with regard to Student B:

511 IAC 7-25-3(b) by failing to implement a general education intervention procedure, at the building level, for students whose classroom performance is adversely affecting educational outcomes;

511 IAC 7-25-5(a) by failing to provide to parents, upon request, information about where an independent educational evaluation may be obtained and the public agency's criteria applicable to independent educational evaluations;

511 IAC 7-25-4(h) by failing to conduct a comprehensive individual evaluation to determine the existence of a disability and the student's educational needs; and

511 IAC 7-25-3(j)(1) by failing to ensure that information obtained from various sources, including information provided by the parent, is documented and carefully considered by the case conference committee in determining whether the student has a disability and is eligible for special education and related services.

**FINDINGS OF FACT:**

1. Student A has been identified as having an orthopedic impairment and has been determined eligible for special education and related services. Student B has not been determined eligible for special education and related services, but has received general education intervention services.
2. On August 17, 2004, at an initial case conference committee (CCC) meeting, the CCC for Student A decided that a diagnostic placement would be made, with a complete evaluation to follow. Then a determination of eligibility would be made based on the diagnostic and evaluative information. The decision of the CCC is reflected in the Case Conference Summary, and the Complainant signed that she agreed with the determination of services.
3. The Case Conference Summary states that the diagnostic placement, or "diagnostic teaching evaluation," will include the following: a picture vocabulary test in both English and the Student's

native language to assess the “extent of language impact on possible evaluation”; further tests in both languages depending on the results of the first evaluation; cognitive and academic tests administered by a psychologist; occupational therapy and physical therapy evaluations; and an articulation and motor evaluation conducted by a speech/language pathologist. The CCC meeting for determining eligibility for special education, based on the completed evaluations, was to be held within 60 instructional days.

4. The completion dates for the evaluations required by the diagnostic placement were as follows: physical therapy, October 14; occupational therapy, October 27; and speech and language, November 23, 2004. The psychological evaluation, which included a picture vocabulary test, cognitive skills test, and developmental profile, was completed on November 8, 2004.
5. On November 10, 2004, the School sent a letter to the Complainant indicating that the Complainant was agreeing to an extension to the 60-day timeline by setting a date for the CCC meeting on November 24, 2004. The 60 days were set to expire on November 15. The extension was needed so that the Complainant’s advocate could attend the CCC meeting.
6. At the November 24, 2004, CCC meeting, Student A was determined eligible for special education and an IEP was developed.
7. The School has general education intervention (GEI) guidelines, which include the following: classroom teacher interventions; criteria for referring to the School Assistance Team; composition of the School Assistance Team; information on making a GEI referral; information on what must occur within 20 instructional days after a request for GEI has been made; and other guidelines. The School noted on the GEI guidelines page that utilization of GEI strategies is not a prerequisite to referring a student for evaluation, but is considered a best practice.
8. A GEI plan was drawn up for the first time for Student B on March 11, 2004. Concerns were identified as Student B’s memory, organization of materials, and ability to stay on task and get started on work. There was a follow-up regarding GEI progress in May 2004 (specific date not provided).
9. A second GEI plan was developed on February 10, 2005. The concern was identified as Student B’s low academic performance. A specific action plan was developed. Student B is still participating in this GEI, and the GEI plan is due to be evaluated again in April 2005.
10. On December 2, 2004, the Complainant e-mailed the Principal to say that she and her husband were not sure that they agreed with the conclusions drawn by the School Psychologist (concerning Student B) during the November 3 psychological evaluation, and discussed at the November 24 CCC meeting. The Complainant stated that they “were wondering about possibly requesting an independent evaluation.” The Complainant asked for the School’s criteria regarding independent evaluations, including the “list of acceptable people” for conducting evaluations, so that she and her husband could further discuss whether to request an independent educational evaluation. The Principal forwarded the Complainant’s e-mail message to the Director.
11. On December 3, 2004, the Director wrote back to the Complainant to say that the School Psychologist’s evaluation was not yet completed, since the CCC had decided on November 24 to have the School Psychologist complete additional testing (a motor-free visual perception test, a visual processing test, and another measure of academic achievement). If the Complainant did not agree with the conclusions upon the completion of the School Psychologist’s evaluation, she could write to the Director to state her disagreement and why she disagreed. The Director would respond within 10

days, either providing information on the School's assistance with an independent evaluation, or initiating a due process hearing to show that the School's evaluation data were accurate.

12. The School supplied the Complainant with the Notice of Procedural Safeguards. The Notice contains a section on independent educational evaluations, stating that the criteria "must be the same as the criteria the school uses when it conducts an evaluation. . . ." The Notice also states that the School must provide the parent, upon his or her request for an independent evaluation, information on where an independent evaluation may be obtained and the criteria that apply to independent evaluations.
13. The School conducted the following evaluations on Student B to determine the existence of a disability and the Student's educational needs: an initial evaluation by the School Psychologist (November 3, 2004); Multidisciplinary Team evaluation (November 24, 2004); a second psychological evaluation by the School Psychologist (December 13, 2004); a second Multidisciplinary Team evaluation (February 3, 2005); occupational therapy evaluation (December 6, 2004); and a Reading Recovery evaluation (January 30, 2005). At the CCC meeting on February 3, 2005, the CCC determined that Student B would be best served by continuing services in the general education environment, and that Student B should be referred for possible Section 504 services.
14. At the CCC meeting on February 3, 2005, the CCC discussed the different evaluations that had been ordered by the School, including the occupational therapy and Reading Recovery evaluations. The CCC also discussed evaluations of Student B that the Complainant had initiated, including an outside TAPS evaluation, an outside occupational therapy evaluation, a Stress Index, the views of a private neuropsychologist, and a trauma report (all mentioned in the CCC notes).

## **CONCLUSIONS:**

1. Finding of Fact #2 indicates that the CCC determined the need for a diagnostic teaching evaluation for Student A. Findings of Fact #3 and #4 indicate that the diagnostic evaluation was implemented according to the plan. Findings of Fact #5 and #6 indicate that arrangements were made for an extension of the 60-day timeline that was originally developed, and that Student A was subsequently found eligible for special education services. Concerning the extension of the timeline, Article 7 does not call for a specific timeline for a diagnostic evaluation, only that a timeline be developed and agreed to. Therefore, a violation of 511 IAC 7-17-23(a) and (b) is not found.
2. Finding of Fact #7 indicates that the School has general education intervention procedures it is required to have. Findings of Fact #8 and #9 indicate that a GEI plan was developed for Student B on March 11, 2004 (reviewed in May 2004), and another GEI plan was developed on February 10, 2005 (to be reviewed in April 2005). Therefore, a violation of 511 IAC 7-25-3(b) is not found.
3. Finding of Fact #10 indicates that the Complainant requested the criteria for independent educational evaluations and a list of acceptable outside evaluators. Finding of Fact #11 indicates that the Director stated that the Complainant needed to wait until the evaluation was completed, but did not provide the requested criteria and list of evaluators. This information was going to be supplied when and if the Complainant wrote to the Director about a disagreement with the School's evaluation. The Complainant was told that she would be asked to state why she disagreed with the School's evaluation, when Article 7 does not require this. Finding of Fact #12 indicates that the Notice of Procedural Safeguards, which was supplied to the Complainant, does not satisfy the School's responsibility for providing its criteria concerning independent evaluations. Therefore, a violation of 511 IAC 7-25-5(a) is found.

4. Finding of Fact #13 indicates that the School did not fail to provide a comprehensive evaluation to determine the existence of a disability and Student B's educational needs. Therefore, a violation of 511 IAC 7-25-4(h) is not found.
5. Finding of Fact #14 indicates that the School did not fail to document and carefully consider information obtained from various sources, including the Complainant. Therefore, a violation of 511 IAC 7-25-3(j)(1) is not found.

#### **DISCUSSION:**

The underlying issue of Complaint #2219.05 is one of eligibility for special education services. The Complainant and the School have both been advised that the complaint process is not the appropriate venue for establishing student eligibility. Appropriate venues for this are: an additional CCC meeting or meetings, special education mediation, or a due process hearing.

**The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.**

#### **CORRECTIVE ACTION:**

East Allen County Schools shall:

Send a written memorandum to teachers of record and case conference committee coordinators, providing information about what to do when information about an independent educational evaluation is requested. The memorandum should discuss providing the School's criteria and a list of evaluators to the parent, even if a formal request for an independent evaluation has not been made. When a request is made, the School will have 10 business days in which to respond.

Documentation of compliance (consisting of the memorandum and a list of people who received it) shall be submitted to the Division by April 18, 2005.